



David B. Cohen  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development  
Michael J. Kruse, Director

Telephone  
(617)-796-1120  
Telefax  
(617) 796-1086  
TDD/TTY  
(617) 796-1089

## CONSERVATION COMMISSION MEETING MINUTES October 23, 2008 Room 209, City Hall

**MEMBERS PRESENT:** Ira Wallach, Chair, S. Lunin, N. Richardson, D. Dickson, J. Hepburn, Dan Green (arrived at 7:45)

**MEMBERS ABSENT:** R. Matthews

**MEMBERS OF THE PUBLIC:** See attached sign-in sheet

Meeting opened at 7:36 p.m.

**30 Rogers St. - Crystal Lake Bath House** - Maria Rose – report on work done and request for partial COC for drainage to close out OOC.

**Report:** Background: When DEP issued its SOC regarding repair of the wall on the Hannon property, it noted that water quality and the success of the beach nourishment program are dependent on management of storm water entering the pond via street storm drains and parking lot run-off. #4 of DEP findings was that mitigating storm water discharge from beach house parking lot and roof drains is necessary...(and required prior to beach nourishment), and basically directed the City to file separate NOIs for each.

DPW filed a NOI and an OOC was issued March 26, 2007. The As-built plan and statement submitted do not state that the work is “substantially in compliance” with the approved plan, and does not list changes. Changes include: Detention pond shown between bath house & MBTA tracks for storm water from parking lot was not installed, a trench between building and MBTA tracks, no infiltration of 2 down spouts, no completion of catch basins as proposed. An accompanying letter explains that work was modified because there is so much ledge in the areas proposed for infiltration that catch basins could not be installed as originally proposed. Some of the roof drainage (~clean, by DEP standards) has been put into infiltration pipes underground, but the two roof drains on the retaining wall side and closest to the water are still draining onto the asphalt and eroding sand into the water. The volume of run-off from the parking lot is still such that substantial erosion channels are very clear in the sand, and on a day when the water is clear the sand can be seen in the pond extending out as much as 10 ft or more from the shoreline. Parking lot run-off (Maria estimates 70%) is somewhat channeled by a berm in front of the building toward the MBTA side and a trench directs the water onto MBTA property – rather than into a detention pond in the area between the building and the MBTA lot as was shown on the NOI plan. But, the rest of the parking lot water is running down the asphalt alongside the building and adding to the erosion of sand into the pond. Now, because of the master planning for the building and parking lot, DPW wants a partial COC for the work performed and wants to close out the OOC. I agree this is an improvement, and it makes sense to do no more if a new building and maybe parking lot will be built there in the near future.

### Conservation Commission

1000 Commonwealth Avenue, Newton, Massachusetts 02459

Email: [aphelps@newtonma.gov](mailto:aphelps@newtonma.gov)

[www.ci.newton.ma.us](http://www.ci.newton.ma.us)

**Meeting:** Maria Rose, DPW Engineer was present and described that deep sumps were not installed as proposed for the parking lot because of ledge outcrops that would prevent infiltration. As much of the other work as possible (infiltration of roof runoff) was done when the bathhouse was closed, but they did not finish all the work. When the adjacent property was acquired by the City, DPW was reluctant to invest further funds in remediation that might have to be re-done because of re-construction of the bathhouse or parking lot. D. Dickson said he is not sure the Commission should take action now to grant a partial Certificate, with a new plan in the works. D. Green advised the city would save money by amending the old Order rather than filing a new one. Closing the Order with less done than initially intended is messier. I. Wallach said he, too, is inclined to leave the Order open, and let DPW report back as new plans are developed. There may be less site constraints now with the acquisition of the [former] Hanlon property. There should be more possibilities for better planning via the 'master plan' process. N. Richardson advises to keep in mind that temporal delays are a problem for the lake, with an eye to future mitigation. I. Wallach offered Ms. Rose the choice to withdraw her request for a partial Certificate or receive a denial. Ms. Rose withdrew her request for a partial Certificate of Compliance.

**Alice Ingerson- discussion of land acquisition priorities w/CPA funds** & determine who from CC will attend November 19<sup>th</sup> Meeting, 7pm City Hall Cafeteria, to develop spending priorities for CPA funds – CC requested to attend, or send representative re goals for acquisition of open space w/CP funds.

**Meeting:** A. Ingerson said the CPA funds are being spent almost on the 4 types of uses permitted. The Open Space Plan has expired and there has been no money to update it. A. Phelps reported that Planning has had a couple of volunteer interns working on it, and now the city will advertise for a part-time, temporary, paid position to finish it – particularly the public participation part. A. Ingerson thinks it is really vital to develop priorities for long-term CP spending, rather than spending all the money each year among whatever proposals are offered. Funds may be requested from CP, to help with the Open Space Plan revision. The Commission agreed that whomever is available will attend the November 19<sup>th</sup> meeting to represent the Commission.

**32 Williams St. – NOI** – continued from 2007, with new plan for 2-family dwelling and driveway in riverfront to the Charles River

**Report:** Owner and representative have asked to address CC, although no new plans. This would be the opportune time to raise the issue of the scope of alternatives (please see prior notes – this hinges on whether the CC deems a two-family house = a single-family house, else the scope should be expanded beyond the lot). And, if the owner plans to propose that the riverfront area is so degraded that they cannot meet the conditions under 10.58(4) → please see (4)(d)1.a, which says that proposed work which does not meet the requirement of 310 CMR 10.58(4)(d)1.a. may be allowed only if they provide 100 ft of undisturbed vegetation, or if a partial rebuttal of the presumptions of significance is sufficient to justify a lesser area of undisturbed vegetation. If they believe the lot is degraded, they should concentrate on requirements under 10.58(5) = redevelopment, and that means mitigation of approximately 2:1 for the increased impervious area in the riverfront – which they probably do not have room to do. Regardless, they should be thinking major mitigation, protected with an on-going condition.

**Meeting:** Applicant Ralph Robart, represented by his attorney Roy Cramer and consultant Lisa Standley (VHB, and Chair, Needham Conservation Commission). R. Cramer reported they have sought a determination from Planning on whether they can construct a 2-family house on the lot. There is no definitive answer on that, yet. L. Standley and R. Cramer asked what the Commission would be looking for in a filing, and raised the question of whether the CC would view their proposal as a single-family house for purposes of limiting the scope of the required alternatives analysis. The Commission indicated that is premature, since they do not yet know what proposal will be submitted. Following discussion, the Commission asked the proponents to come back with their proposal for an alternatives analysis for the CC to evaluate when they have a definitive answer from Planning. The proponent(s) asked to continue to the November 20<sup>th</sup> meeting.

**326 Fuller St** – Brae Brun Country Club request for extension of OOC #239-510

**Report:** After a site walk, I can report that completed work includes the gas line installation, construction of the new maintenance facility, the paddle tennis court hut, with roof water infiltrated, renovation to the pool house and construction of the new snack bar. Also, above-ground propane tanks have been removed. All areas connected with this work have been re-stabilized. Work that has not been completed is all on the "parcel" site

near Fuller Street, including repair/re-construction of the parking lot between buildings A and B, expansion of the former maintenance building, work on the cart building and the drainage associated with this work. Most of this work is within the 100 ft buffer to the Brae Burn pond next to Fuller St. This work was left until last because of the necessity of building the new maintenance facility before abandoning the old one, and because of cost considerations. As new condition, applicants should get sign-off of erosion and sediment control measures prior to starting remaining work.

**Meeting:** Steven Cummings, Brae Burn Manager, and Richard Kosian, Beals & Thomas, Inc. presented the project and summarized the work done and the work remaining to be done. The Commission asked if the mitigation had been completed. Mr. Kosian listed improvements, including directing much of parking lot run-off by paddle courts to new catch basins, has constructed a sediment fore-bay to the pond, and has removed the propane tank. The additional mitigation/improvements associated with re-paving near the old maintenance building will be done when the paving is done. A three-year extension is requested, to allow time to raise funds and finish planning.

**Motion by D. Dickson to extend the Order of Conditions for 3 years, with recommended condition. S. Lunin seconded. Vote: All in favor. Motion passed.**

**64 Adeline** – Request for Amended OOC to alter determination of wetlands and requirement for mitigation plantings.

**Report:** Applicant's representative (Everett Brooks) filed for them, showing Paul Brook as having a 200 ft riverfront area, which was accepted by the Environmental Planner and the CC at face value. Later filings in the neighborhood questioned that determination, and the CC, on two subsequent filings determined that Paul Brook is intermittent. Although there is a strong desire to be fair to the applicant, DEP does not allow a wetland delineation to be altered (for a given filing) within the 3-yr period of an OOC. Consider, for example, that wetlands may change – wetland lines can move and ground water supply may dry up, so that subsequent filings may not be bound by the same requirements as earlier filings, BUT that does not invalidate earlier delineations. The applicant is also asking not to do the mitigation required by the CC, planting a small area of native shrubs. Because the plantings are a mitigation, not part of the work proposed by the applicant, this is also problematic. I believe the CC may: 1) refuse to amend the OOC, or, it may 2) remove the requirement for mitigation, or 3) it may remove the requirement to maintain the mitigation area, in light of subsequent findings.

**Meeting:** John Rockwood, EcoTec, and Jason Rosenberg, Esq., were present for the applicant. J. Rockwood indicated that the city GIS map showed Paul Brook as having a 200 ft riverfront prior to the filing but the map was changed after the filing (Wetland Properties, Floodplains and Conservation Restrictions, dated August 10, 2007) and said the stream does not meet the watershed requirements for a perennial stream. A. Phelps reported that advice from DEP was that determination should run for the 3 years of the Order. I. Wallach asked whether the owner objected to doing the mitigation plantings, which is only 48 sf in area. J. Rockwood said the owner is willing to do the plantings but does not want an on-going condition on the property that might affect a future sale. **Motion by D. Green to amend the Order to eliminate the requirement for mitigation maintenance in perpetuity, with notation in the file that this action is taken in light of the fact that the stream appears to be intermittent at this location based on wetland properties, and as shown on the "Wetland Properties, Floodplain and Conservation Restriction Map of August 10, 2007."** As agreed by the applicant, however, the applicant must complete the mitigation for his Certificate of Compliance. **Second by Doug Dickson. Vote: All in favor. Motion passed.**

**780 Watertown** – RDA for demo and re-build house mostly outside of 200 ft riverfront, but with 2 infiltration drains, 2 partial staircases and minor grading within the riverfront to Cheesecake Brook.

**Report:** The present house is very slightly in the outer riverfront. Asphalt of a paved driveway/parking area in riverfront was recently removed by the former owner (without filing). New house has infiltration of roof drains, and will sit slightly farther away from resource areas (except for new decks). Overall, it represents an improvement to the riverfront's ability to protect the interests under the Act.

**Meeting:** Dan Mcauliffe, owner, and Joe Porter, VTP described the project. Commission members asked to plan showing where the present house sits relative to the 200 ft riverfront as compared to where the proposed house will sit- the foundation for the new house is out of the 200 ft riverfront.

**Motion by D. Green to issue a positive determination on the resource area and a negative determination for the work. Second by Susan Lunin. Vote: All in favor. Motion passed.**

**146 Albemarle** - Charlie & Julia Sweet – revisit request for COC – see letter in file; owners believe that despite standard wording in OOC, and CC’s previous refusal of CoC, they were not required to infiltrate roof runoff. If roof size did not increase, perhaps it was just an oversight not to delete that clause in the standard conditions.

**Meeting:** Mr. and Mrs. Sweet were present and Mrs. Sweet described history and said they did not believe they were supposed to infiltrate roof run-off for addition. A. Phelps noted that every previous filing for additions on Albemarle in the riverfront the Commission had made infiltration of roof run-off part of the OOC. Mrs. Sweet said that drainage from the roof runs away from Cheesecake to a low point in their yard. Discussion of John Daghlian’s memo in the file (that infiltration is not needed) clarified by I. Wallace – it is not binding on the Commission.

**Motion by D. Dickson to grant modification to OOC, upon receipt of written request to the Commission to remove the infiltration requirement. Second by S. Lunin. Vote: All in favor. Motion passed.**

**Motion by D. Green to issue COC. Second by S. Lunin. Vote: All in favor. Motion passed.**

**15 Harwich Rd** –G.L.M. had proposed in a letter to plant double the number of plantings in exchange for earlier sign-off on EO; CC rejected proposal. G.L.M. representative had requested to be put on the agenda to address the CC directly. However, no representative attended the last meeting, and G.L.M.’s representative has not returned calls. Letter sent to new owners to come in and address the issues. No response received from new owners.

**Meeting:** No response has been received from new owners. Commission directed staff to direct legal staff to get an injunction. A. Phelps noted some towns are using performance bonds to try to ensure mitigation occurs. I. Wallace asked A. Phelps to find out more details of how other towns use this tool and report back to Commission.

#### **Violations (\*needs action)**

**\*394 Boylston St.** –condo owned by BC and Mr. Liu. Plan for proposed mitigation for vernal pool submitted.

**Report:** Mr. Travaglini is working with me to supply all necessary details to the plan.

**Meeting:** I. Wallach asked how close they were to submitting an acceptable plan. A. Phelps reported that BC has been working with Paul Finger Associates to develop a detailed plan of existing and proposed conditions. I. Wallach said that the Commission delegates D. Green and A. Phelps to review BC plan, and to permit BC to proceed without further CC approval when the plan is acceptable.

**160 Pine St – Gazebo** - plans to do the work this fall

**1203&1211 Washington** – DPW finished their repairs to wall; contractor for Mr. Donato to begin.

**93 Andrew St** – nothing new

**3 Fuller** – nothing new

#### **Certificates of Compliance**

**MWRA** – Upper Neponset relief sewer (Kessler Woods) – work completed, but awaiting “as-built.”

**15 Marla Circle-DEP #239-544** – not ready

**285 Newtonville** – not ready.

**1676 Commonwealth** - DEP #239-545- exceeded OOC –proposed minor alteration must be completed.

**11-19 Hargrove Circle** – no as-built

#### **Announcements & General Business:**

**\*July, 2008 Meeting Minutes (July 24 & 31 for approval) – REVISIT RE 70 Oldham RDA (positive #3 should be positive #5)**

**Meeting:** Determination has been issued – this will ensure the vote approves what was actually issued.

**Motion by J. Hepburn to approve modification of positive #3 to positive #5. Second by D. Dickson. Vote: All in favor. Motion passed.**

**September 2008 Meeting Minutes** for approval

**Meeting: Motion by S. Lunin to approve minutes. Second by D. Green. Vote: S. Lunin, D. Green, D. Dickson, N. Richardson voted “aye,” I. Wallach abstained. Motion passed.**

Non-criminal ticketing – report.

Meeting: D. Dickson said he really wants this item to get onto the Board of Alderman agenda, and asked staff to make this a priority.

**Outstanding issues – discussion**

**Proposed ordinance** – Need cover letter signed by Chair & need CC member(s) willing to go to BOA meeting to support the ordinance.

**Meeting:** Staff reported that the Aldermen may not need anyone to attend the meeting because the item is self-explanatory. I. Wallach will take the draft cover letter to the BOA prepared by staff for editing and will sign and return it.

**Other**

Staff reported:

The Garden Club, on its own initiative, with its own funds, purchased more native plants and planted them in the bio-retention ponds at Hammond Pond last week.

Eric Olson emailed that he wants to do “clean-up” behind Countryside School (backs on Andrews w/tributary stream running behind houses).

Eric Strauss – Coyote project-seems to be carrying on w/trapping w/out reporting to CC and other permits may not be in order.

Meeting adjourned at 10:10 pm.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner